ARKANSAS RIVER COMPACT, 1948

The State of Colorado and the State of Kansas, parties signatory to this Compact (hereinafter referred to as "Colorado" and "Kansas", respectively, or individually as a "State", or collectively as the "States") having resolved to conclude a compact with respect to the waters of the Arkansas River, and being moved by considerations of interstate comity, having appointed commissioners as follows: "Henry C. Vidal, Gail L. Ireland, and Harry B. Mendenhall, for Colorado; and George S. Knapp, Edward F. Arn, William E. Leavitt, and Roland H. Tate, for Kansas"; and the consent of the Congress of the United States to negotiate and enter into an interstate compact not later than January 1, 1950, having been granted by Public Law 34, 79th Congress, 1st Session, and pursuant thereto the President having designated Hans Kramer as the representative of the United States, the said commissioners for Colorado and Kansas, after negotiations participated in by the representatives of the United States, have agreed as follows:

ARTICLE I

The major purposes of this Compact are to:

A. Settle existing disputes and remove causes of future controversy between the States of Colorado and Kansas, and between citizens of one and citizens of the other State, concerning the waters of the Arkansas River and their control, conservation and utilization for irrigation and other beneficial purposes.

B. Equitably divide and apportion between the States of Colorado and Kansas the waters of the Arkansas River and their utilization as well as the benefits arising from the construction, operation and maintenance by the United States of John Martin Reservoir Project for water conservation purposes.

ARTICLE II

The provisions of this Compact are based on (1) the physical and other conditions peculiar to the Arkansas River and its natural drainage basin, and the nature and location of irrigation and other developments and facilities in connection therewith; (2) the opinion of the United States Supreme Court entered December 6, 1943, in the case of *Colorado v. Kansas* (320 U.S. 383) concerning the relative rights of the respective States in and to the use of waters of the Arkansas River; and (3) the experience derived under various interim executive agreements between the two States apportioning the waters released from the John Martin Reservoir as operated by the Corps of Engineers.

ARTICLE III

As used in this Compact:

A. The word "Stateline" means the geographical boundary line between Colorado and Kansas.

B. The term "waters of the Arkansas River" means the waters originating in the natural drainage basin of the Arkansas River, including its tributaries, upstream from

the Stateline, and excluding waters brought into the Arkansas River Basin from other river basins.

C. The term "Stateline flow" means the flow of waters of the Arkansas River as determined by gaging stations located at or near the Stateline. The flow as determined by such stations, whether located in Colorado or Kansas, shall be deemed to be the actual Stateline flow.

D. "John Martin Reservoir Project" is the official name of the facility formerly known as Caddoa Reservoir Project, authorized by the Flood Control Act of 1936, as amended, for construction, operation and maintenance by the War Department, Corps of Engineers, later designated as the Corps of Engineers, Department of the Army, and herein referred to as the "Corps of Engineers". "John Martin Reservoir" is the water storage space created by "John Martin Dam".

E. The "flood control storage" is that portion of the total storage space in John Martin Reservoir allocated to flood control purposes.

F. The "conservation pool" is that portion of the total storage space in John Martin Reservoir lying below the flood control storage.

G. The "ditches of Colorado Water District 67" are those ditches and canals which divert water from the Arkansas River or its tributaries downstream from John Martin Dam for irrigation use in Colorado.

H. The term "river flow" means the sum of the flows of the Arkansas and the Purgatoire Rivers into John Martin Reservoir as determined by gaging stations appropriately located above said Reservoir.

I. The term "the Administration" means the Arkansas River Compact Administration established under Article VIII.

ARTICLE IV

Both States recognize that:

A. This Compact deals only with the waters of the Arkansas River as defined in Article III.

B. This Compact is not concerned with the rights, if any, of the State of New Mexico or its citizens in and to the use in New Mexico of waters of Trinchera Creek or other tributaries of the Purgatoire River, a tributary of the Arkansas River.

C. (1) John Martin Dam will be operated by the Corps of Engineers to store and release the waters of the Arkansas River in and from John Martin Reservoir for its authorized purposes.

(2) The bottom of the flood control storage is presently fixed by the Chief of Engineers, U.S. Army, at elevation 3,851 feet above mean sea level. The flood control storage will be operated for flood control purposes and to those ends will impound or regulate the streamflow volumes that are in excess of the then available storage capacity of the conservation pool. Releases from the flood control storage may be made at times and rates determined by the Corps of Engineers to be necessary or advisable without regard to ditch diversion capacities or requirements in either or both States.

(3) The conservation pool will be operated for the benefit of water users in Colorado and Kansas, both

upsteam and downstream from John Martin Dam, as provided in this Compact. The maintenance of John Martin Dam and appurtenant works may at times require the Corps of Engineers to release waters then impounded in the conservation pool or to prohibit the storage of water therein until such maintenance work is completed. Flood control operation may also involve temporary utilization of conservation storage.

D. This Compact is not intended to impede or prevent future beneficial development of the Arkansas River basin in Colorado and Kansas by Federal or State agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoir, and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas River, as defined in Article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this Compact by such future development or construction.

ARTICLE V

Colorado and Kansas hereby agree upon the following basis of apportionment of the waters of the Arkansas River:

A. Winter storage in John Martin Reservoir shall commence on November 1st of each year and continue to and include the next succeeding March 31st. During said period all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that Colorado may demand releases of water

equivalent to the river flow, but such releases shall not exceed 100 c.f.s. (cubic feet per second) and water so released shall be used without avoidable waste.

B. Summer storage in John Martin Reservoir shall commence on April 1st of each year and continue to and include the next succeeding October 31st. During said period, except when Colorado water users are operating under decreed priorities as provided in paragraphs F and G of this Article, all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: Provided, that Colorado may demand releases of water equivalent to the river flow up to 500 c.f.s., and Kansas may demand releases of water equivalent to that portion of the river flow between 500 c.f.s. and 750 c.f.s., irrespective of releases demanded by Colorado.

C. Releases of water stored pursuant to the provisions of paragraphs A and B of this Article shall be made upon demands by Colorado and Kansas concurrently or separately at any time during the summer storage period. Unless increases to meet extraordinary conditions are authorized by the Administration, separate releases of stored water to Colorado shall not exceed 750 c.f.s., separate releases of stored water to Kansas shall not exceed 500 c.f.s., and concurrent releases of stored water shall not exceed a total of 1,250 c.f.s.: Provided, that when water stored in the conservation pool is reduced to a quantity less than 20,000 acre-feet, separate releases of stored water to Colorado shall not exceed 600 c.f.s., separate releases of stored water to Kansas shall not exceed 400 c.f.s., and concurrent releases of stored water shall not exceed 1,000 c.f.s.

D. Releases authorized by paragraphs A, B and C of this Article, except when all Colorado water users are operating under decreed priorities as provided in paragraphs F and G of this Article, shall not impose any call on Colorado water users that divert waters of the Arkansas River upstream from John Martin Dam.

E. (1) Releases of stored water and releases of river flow may be made simultaneously upon the demands of either or both States.

(2) Water released upon concurrent or separate demands shall be applied promptly to beneficial use unless storage thereof downstream is authorized by the Administration.

(3) Releases of river flow and of stored water to Colorado shall be measured by gaging stations located at or near John Martin Dam and the releases to which Kansas is entitled shall be satisfied by an equivalent in Stateline flow.

(4) When water is released from John Martin Reservoir appropriate allowances as determined by the Administration shall be made for the intervals of time required for such water to arrive at the points of diversion in Colorado and at the Stateline.

(5) There shall be no allowance or accumulation of credits or debits for or against either State.

(6) Storage, releases from storage and releases of river flow authorized in this Article shall be accomplished pursuant to procedures prescribed by the Administration under the provisions of Article VIII.

F. In the event the Administration finds that within a period of fourteen (14) days the water in the conservation pool will be or is liable to be exhausted, the Administration shall forthwith notify the State Engineer of Colorado, or his duly authorized representative, that commencing upon a day certain within said fourteen (14) day period, unless a change of conditions justifies cancellation or modification of such notice, Colorado shall administer the decreed rights of water users in Colorado Water District 67 as against each other and as against all rights now or hereafter decreed to water users diverting upstream from John Martin Dam on the basis of relative priorities in the same manner in which their respective priority rights were administered by Colorado before John Martin Reservoir began to operate and as though John Martin Dam had not been constructed. Such priority administration by Colorado shall be continued until the Administration finds that water is again available in the conservation pool for release as provided in this Compact, and timely notice of such finding shall be given by the Administration to the State Engineer of Colorado or his duly authorized representative: Provided, that except as controlled by the operation of the preceding provisions of this paragraph and other applicable provisions of this Compact, when there is water in the conservation pool the water users upstream from John Martin Reservoir shall not be affected by the decrees to the ditches in Colorado Water District 67. Except when administration in Colorado is on a priority basis the water diversions in Colorado Water District 67 shall be administered by Colorado in accordance with distribution agreements made

from time to time between the water users in such District and filed with the Administration and with the State Engineer of Colorado or, in the absence of such agreement, upon the basis of the respective priority decrees, as against each other, in said District.

G. During periods when Colorado reverts to administration of decreed priorities, Kansas shall not be entitled to any portion of the river flow entering John Martin Reservoir. Waters of the Arkansas River originating in Colorado which may flow across the Stateline during such periods are hereby apportioned to Kansas.

H. If the usable quantity and availability for use of the waters of the Arkansas River to water users in Colorado Water District 67 and Kansas will be thereby materially depleted or adversely affected, (1) priority rights now decreed to the ditches of Colorado Water District 67 shall not hereafter be transferred to other water districts in Colorado or to points of diversion or places of use upstream from John Martin Dam; and (2) the ditch diversion rights from the Arkansas River in Colorado Water District 67, and of Kansas ditches between the Stateline and Garden City shall not hereafter be increased beyond the total present rights of said ditches, without the Administration, in either case (1) or (2), making findings of fact that no such depletion or adverse effect will result from such proposed transfer or increase. Notice of legal proceedings for any such proposed transfer or increase shall be given to the Administration in the manner and within the time provided by the laws of Colorado or Kansas in such cases.

ARTICLE VI

A. (1) Nothing in this Compact shall be construed as impairing the jurisdiction of Kansas over the waters of the Arkansas River that originate in Kansas and over the waters that flow from Colorado across the Stateline into Kansas.

(2) Except as otherwise provided, nothing in this Compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas River in said State as decreed to said appropriators by the courts of Colorado, nor as interfering with the distribution among said appropriators by Colorado, nor as curtailing the diversion and use for irrigation and other beneficial purposes in Colorado of the waters of the Arkansas River.

B. Inasmuch as the Frontier Canal diverts waters of the Arkansas River in Colorado west of the Stateline for irrigation uses in Kansas only, Colorado concedes to Kansas and Kansas hereby assumes exclusive administrative control over the operation of the Frontier Canal and its headworks for such purposes, to the same extent as though said works were located entirely within the State of Kansas. Water carried across the Stateline in the Frontier Canal or another similarly situated canal shall be considered to be part of the Stateline flow.

ARTICLE VII

A. Each State shall be subject to the terms of this Compact. Where the name of the State or the term "State" is used in this Compact these shall be construed to

include any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the waters of the Arkansas River under the authority of that State.

B. This Compact establishes no general principle or precedent with respect to any other interstate stream.

C. Wherever any State or Federal official or agency is referred to in this Compact such reference shall apply to the comparable official or agency succeeding to their duties and functions.

ARTICLE VIII

A. To administer the provisions of this Compact there is hereby created an interstate agency to be known as the Arkansas River Compact Administration herein designated as "The Administration."

B. The Administration shall have power to:

(1) Adopt, amend and revoke by-laws, rules and regulations consistent with the provisions of this Compact;

(2) Prescribe procedures for the administration of this Compact: Provided, that where such procedures involve the operations of John Martin Reservoir Project they shall be subject to the approval of the District Engineer in charge of said Project;

(3) Perform all functions required to implement this Compact and to do all things necessary, proper or convenient in the performance of its duties.

C. The membership of the Administration shall consist of three representatives from each State who shall be appointed by the respective Governors for a term not to exceed four years. One Colorado representative shall be a resident of and water right owner in Water Districts 14 or 17, one Colorado representative shall be a resident of and water right owner in Water District 67, and one Colorado representative shall be the Director of the Colorado Water Conservation Board. Two Kansas representatives shall be residents of and water right owners in the counties of Finney, Kearny or Hamilton, and one Kansas representative shall be the chief State official charged with the administration of water rights in Kansas. The President of the United States is hereby requested to designate a representative of the United States, and if a representative is so designated he shall be an ex-officio member and act as chairman of the Administration without vote.

D. The State representatives shall be appointed by the respective Governors within thirty days after the effective date of this Compact. The Administration shall meet and organize within sixty days after such effective date. A quorum for any meeting shall consist of four members of the Administration: Provided, that at least two members are present from each State. Each State shall have but one vote in the Administration and every decision, authorization or other action shall require unanimous vote. In case of a divided vote on any matter within the purview of the Administration, the Administration may, by subsequent unanimous vote, refer the matter for arbitration to the Representative of the United States or other arbitrator or arbitrators, in which event

the decision made by such arbitrator or arbitrators shall be binding upon the Administration.

E. (1) The salaries, if any, and the personal expenses of each member shall be paid by the government which he represents. All other expenses incident to the administration of this Compact which are not paid by the United States shall be borne by the States on the basis of 60 per cent by Colorado and 40 per cent by Kansas.

(2) In each even numbered year the Administration shall adopt and transmit to the Governor of each State its budget covering anticipated expenses for the forthcoming biennium and the amount thereof payable by each State. Each State shall appropriate and pay the amount due by it to the Administration.

(3) The Administration shall keep accurate accounts of all receipts and disbursements and shall include a statement thereof, together with a certificate of audit by a certified public accountant, in its annual report. Each State shall have the right to make an examination and audit of the accounts of the Administration at any time.

F. Each State shall provide such available facilities, equipment and other assistance as the Administration may need to carry out its duties. To supplement such available assistance the Administration may employ engineering, legal, clerical, and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the Administration, and shall not be considered to be employees of either State.

G. (1) The Administration shall cooperate with the chief official of each State charged with the administration of water rights and with Federal agencies in the systematic determination and correlation of the facts as to the flow and diversion of the waters of the Arkansas River and as to the operation and siltation of John Martin Reservoir and other related structures. The Administration shall cooperate in the procurement, interchange, compilation and publication of all factual data bearing upon the administration of this Compact without, in general, duplicating measurements, observations or publications made by State or Federal agencies. State officials shall furnish pertinent factual data to the Administration upon its request. The Administration shall, with the collaboration of the appropriate Federal and State agencies, determine as may be necessary from time to time, the location of gaging stations required for the proper administration of this Compact and shall designate the official records of such stations for its official use.

(2) The Director, U.S. Geological Survey, the Commissioner of Reclamation and the Chief of Engineers, U.S. Army, are hereby requested to collaborate with the Administration and with appropriate State officials in the systematic determination and correlation of data referred to in paragraph G (1) of this Article and in the execution of other duties of such officials which may be necessary for the proper administration of this Compact.

(3) If deemed necessary for the administration of this Compact, the Administration may require the installation and maintenance, at the expense of water users, of measuring devices of approved type in any ditch or groups of ditches diverting water from the Arkansas

River in Colorado or Kansas. The chief official of each State charged with the administration of water rights shall supervise the execution of the Administration's requirements for such installations.

H. Violation of any of the provisions of this Compact or other actions prejudicial thereto which come to the attention of the Administration shall be promptly investigated by it. When deemed advisable as the result of such investigation, the Administration may report its findings and recommendations to the State official who is charged with the administration of water rights for appropriate action, it being the intent of this Compact that enforcement of its terms shall be accomplished in general through the State agencies and officials charged with the administration of water rights.

I. Findings of fact made by the Administration shall not be conclusive in any court or before any agency or tribunal but shall constitute prima facie evidence of the facts found.

J. The Administration shall report annually to the Governors of the States and to the President of the United States as to matters within its purview.

ARTICLE IX

A. This Compact shall become effective when ratified by the Legislature of each State and when consented to by the Congress of the United States by legislation providing substantially, among other things, as follows:

"Nothing contained in this Act or in the Compact herein consented to shall be construed as impairing or

affecting the sovereignty of the United States or any of its rights or jurisdiction in and over the area or waters which are the subject of such Compact: Provided, that the Chief of Engineers is hereby authorized to operate the conservation features of the John Martin Reservoir Project in a manner conforming to such Compact with such exceptions as he and the Administration created pursuant to the Compact may jointly approve."

B. This Compact shall remain in effect until modified or terminated by unanimous action of the States and in the event of modification or termination all rights then established or recognized by this Compact shall continue unimpaired.

IN WITNESS WHEREOF, The commissioners have signed this Compact in triplicate original, one of which shall be forwarded to the Secretary of State of the United States of America and one of which shall be forwarded to the Governor of each signatory State.

Done in the City and County of Denver, in the state of Colorado, on the fourteenth day of December, in the Year of our Lord One Thousand Nine Hundred and Forty-eight.

Henry C. Vidal
Gail L. Ireland
Harry B. Mendenhall
Commissioners for Colorado

George S. Knapp
Edward F. Arn
William E. Leavitt
Roland H. Tate
Commissioners for Kansas

Attest:
Warden L. Noe
Secretary

Approved:
Hans Kramer
Representative of the United States